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Supreme Court, U.S.
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No. 87-1580

In The

Supreme Court of the United States

October Term, 1987

—o—

JOSEPH M. LOESCHNIG,

Petitioner,

vs.

CHRYSLER CREDIT CORPORATION, a corporation, CHRYSLER FINANCIAL CORPORATION, a corporation, CHRYSLER CORPORATION, a corporation,

Respondents.

—o—

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

—o—

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QUESTION PRESENTED

If a beneficiary participant of a health and welfare plan under the Employees Retirement Income Security Act (ERISA) does not comply with the continuing eligibility requirements in the Summary Plan Description (SPD) and the Plan itself, can benefits be discontinued by the Plan's fiduciaries?

PARTIES TO THE PROCEEDING

Respondents agree with Petitioner's statement, with the clarification that Chrysler Financial Corporation is a wholly-owned subsidiary of Chrysler Corporation, and that Chrysler Credit Corporation is a wholly-owned subsidiary of Chrysler Financial Corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	i
TABLE OF AUTHORITIES	iii
OPINIONS AND JUDGMENTS IN COURTS BELOW	1
STATEMENT OF ALLEGED JURISDICTION	2
STATUTES AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	9
ARGUMENT	
I. NO GROUNDS EXIST FOR GRANTING REVIEW BY WRIT OF CERTIORARI IN THIS CASE, AS THERE IS NO CONFLICT BETWEEN THE NINTH CIRCUIT'S OPINION IN THIS CASE AND DECISIONS RENDERED BY OTHER FEDERAL COURTS OF APPEALS ON THE SAME MATTER.	11
A. THERE IS NO JURISDICTIONAL BASIS FOR REVIEW.	11
B. THE CASES PETITIONER CITES ARE INAPPOSITE.	14
II. GRANT OF A WRIT OF CERTIORARI IS INAPPROPRIATE TO REVIEW FACTS OR INFERENCES THEREFROM.	16
CONCLUSION	17
APPENDIX "A"	App. 1
APPENDIX "B"	App. 11

TABLE OF AUTHORITIES

Page

CASES:

Gallo v. Howard Stores Corp., 145 F. Supp. 909 (D.C. Pa. 1956), *aff'd* 250 F.2d 37 (3d Cir. 1957) 16

General Talking Pictures Corp. v. Electric Co., 304 U.S. 175 (1937) 16

Hurd v. Hutnik, 419 F. Supp. 630 (D.N.J. 1976) 16

Kochendorfer v. Rockdale Sash & Trim Co., Inc., 653 F. Supp. 612 (N.D.Ill. 1987) 15

Maness v. Williams, 513 F.2d 1264 (8th Cir. 1975) 14

McKnight v. Southern Life and Health Ins. Co., 758 F.2d 1566 (11th Cir. 1985) 14

Morgan v. Mullins, 643 F.2d 1320 (8th Cir. 1981) 14

N.L.R.B. v. Pittsburgh S.S. Co., 340 U.S. 498 (1951) 12

Turner v. Local Union No. 302, Int'l Bro'hd. of Teamsters, 604 F.2d 1219 (9th Cir. 1979) 15

United States v. Constantine, 296 U.S. 287 (1935) 12

United States v. Johnson, 268 U.S. 220 (1925) 16

United States v. U.S. Gypsum Co., 333 U.S. 369 (1948) 13

Wilken v. AT&T Technologies, Inc., 632 F. Supp. 772 (E.D.Mo. 1984), *aff'd* 822 F.2d 1095 (8th Cir. 1987) 15

STATUTES AND RULES:

28 U.S.C. § 2101(c) 2, 12

Rule 17 of Court Rules of U.S. Supreme Court 2, 11

Rule 20.2 of Court Rules of U.S. Supreme Court 11

Rule 20.4 of Court Rules of U.S. Supreme Court 12

Rule 52 of Federal Rules of Civil Procedure 13

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vs.

CHRYSLER CREDIT CORPORATION, a corporation, CHRYSLER FINANCIAL CORPORATION, a corporation, CHRYSLER CORPORATION, a corporation,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS AND JUDGMENTS IN COURTS BELOW

Respondents basically agree with the recitation by Petitioner. Respondents add, however, that Findings of Fact and Conclusions of Law in the Trial Court were entered on June 6, 1986, superseding the Memorandum of Intended Opinion. These are included as Appendix A to this Brief. The Judgment of the Trial Court is attached as Appendix B to this Brief.

STATEMENT OF ALLEGED JURISDICTION

Although never specified by him, Petitioner apparently attempts to invoke the jurisdiction of this Court pursuant to Rule 17(a) of the Court Rules of the Supreme Court of the United States and 28 U.S.C. section 2101(c), requiring a Petition for Writ of Certiorari to be filed within ninety days after the entry of a judgment or decree in a civil action, where an alleged conflict exists between the decisions of various federal courts of appeals on similar matters.

As noted below, however, Respondents respectfully submit that no such jurisdiction exists in this case, as there is no conflict between the decisions of the lower courts in this case and those cited by Petitioner.

STATUTES AND REGULATIONS INVOLVED

Respondents agree with Petitioner's statement.

STATEMENT OF THE CASE

Petitioner was employed by Respondent, Chrysler Credit Corporation ("Credit"), on September 18, 1967, where he was assigned to the San Diego branch (CR 59, p.3). In 1979, Petitioner requested a transfer from the San Diego branch, and was assigned the position of Branch Auditor, and given training in that capacity. After a few months in the capacity of Branch Auditor, he was trans-

ferred to the Long Beach branch, again at his request (RT 311-13). Although the Long Beach branch did not have an opening for a person of Petitioner's seniority, they accommodated his request and assigned him to temporary duties as a telephone adjuster (RT 38-40). No reduction in salary accompanied any of these transfers (RT 39). On November 19, 1981, Petitioner left his employment with Credit and applied for disability leave (CR 59, p.3). The medical condition for which Petitioner was granted disability is described as "hypertension," evidenced by high blood pressure (RT 382-390).

Respondent, Chrysler Corporation ("Chrysler"), maintains two disability leave plans (RT 56-57). One is entitled "Disability Absence Plan" (DAP) and is a 12-month plan (Exhibit 206). The second is entitled "Long Term Disability Plan" (LTD) and is a plan which commenced upon expiration of the 12-month DAP coverage and is available for extended disability periods (Exhibit 207). Respondent, Chrysler Financial Corporation ("Financial"), administers the DAP plan for employees of Credit (RT 47-50).

Upon commencing his disability period, Petitioner and his wife relocated in the San Diego area, where they remained for a short period of time, then moved to Las Vegas (RT 279-280). On January 15, 1982, at the request of Financial, Petitioner was examined by Russell F. Miller, M.D., a physician in the Las Vegas area (Exhibit 11). Dr. Miller confirmed the disability of Petitioner (Exhibit 11), and thereafter, became Petitioner's regular treating physician (RT 289-290).

On July 26, 1982, Financial received a letter from Dr. Miller indicating that Petitioner could return to work in

a lesser capacity, not involving emotional stress (Exhibit 28). Financial had previously discussed with Mr. Roseman, Petitioner's counsel, that it was Credit's intention to return Petitioner to work in a capacity which would accommodate any continuing disability of Petitioner (Exhibit 35, p.8; RT 152-153).

On October 25, 1982, Financial was informed that Petitioner had failed to appear in California for an examination with Dr. Padova as ordered by the Judge in Petitioner's worker's compensation case. This failure to appear prompted a review by Financial of Petitioner's disability file (RT 211-212). Based upon this review, it was determined to send Petitioner a letter informing him that his payments under the DAP were being discontinued and requesting him to return to work on November 8, 1982, at the Long Beach, California branch of Credit (Exhibit 35, p.11; RT 162, 103-105, 212). This action was taken because, in Financial's opinion, Petitioner had failed to furnish evidence of a continuing disability (Exhibit 35, p.11; RT 116-117, 104-105).

Petitioner did not report for work on November 8, 1982, and, in fact, did not even contact Financial or Credit (RT 305-306). On November 17, 1982, Financial sent Petitioner a letter terminating his employment (Exhibit 39).

Petitioner was obligated under DAP to provide attending physician's supplements every 30 days (Exhibit 206, p.13). However, as of October, 1982, Financial had received only one physician's supplement from Petitioner within the preceding four months, and that statement was from a Dr. Gould, who was not Petitioner's treating physician (RT 122-124).

Petitioner's disability payments were *not* discontinued because he failed to appear for the Dr. Padova examination. As of October, 1982, it appeared to Financial that Dr. Miller was Petitioner's treating physician. Petitioner admitted that Dr. Miller had been his treating physician since June 1, 1982 (RT 290). On July 16, 1982, Financial received Dr. McKinnon's report (Exhibit 25). On July 26, 1982, Financial received a report from Dr. Miller (Exhibit 28). The only other physician's supplement submitted by Petitioner from July-October, 1982, was a supplement from Dr. Gould (RT 122-123). Also, Petitioner's counsel had told Financial that a Dr. Christensen was Petitioner's treating physician (Exhibit 36, pp.8-9, RT 104, 110-111). Financial had no physician's supplements from a Dr. Christensen. Finally, in his July, 1982 report, Dr. Miller had stated that Petitioner could return to work in a lesser capacity not involving stress (Exhibit 28). When Financial learned that a worker's compensation examination of Petitioner had been rescheduled in California for October 25th, they had decided to wait for the results of that examination before taking any action on Petitioner's file (RT 104-105). Although Petitioner was seriously deficient in furnishing attending physician's statements, Financial attempted to give Petitioner every opportunity to prove his continued disability (RT 104-105). When Petitioner failed to report for the October 25th examination, Financial determined that a review of his file was in order (RT 116-117, 162-163, 212). Petitioner's failure to appear at the Dr. Padova examination precipitated the review of his file, but was *not* the reason his disability benefits were discontinued (RT 116-117). Petitioner's employment was terminated because Petitioner did not respond to the

November 2, 1982 request to return to work (RT 226). Petitioner's employment was terminated under a Chrysler employment policy providing for termination of employees who are absent for work without having substantiated a valid disability and who refuse to return to work when requested (Exhibit 93; RT 226).

In the latter part of November, 1982, Financial received a letter dated November 15, 1982, from Petitioner's counsel requesting a review of the decision to discontinue disability payments (RT 129-130; Exhibit 38). Financial conducted a review of Petitioner's case and responded to counsel on January 15, 1983 (Exhibit 41). Counsel was advised of the reasons for the discontinuance of disability benefits, and was invited to supply additional medical information which would establish Petitioner's eligibility for continued benefits (RT 131). No such medical information or additional physicians' supplements were ever supplied.

On November 28, 1982, Petitioner applied for unemployment insurance benefits (Exhibit 201). His application was initially turned down by the Employment Development Department on the grounds that he had not proved that he had been released by his physician to return to work and it was therefore held that he was not available for work (Exhibit 202). Petitioner appealed this decision and certified to the Employment Development Department that he had been released by his physician and that he was actively seeking employment in the Las Vegas area. Petitioner attached a statement from Dr. Miller dated November 23, 1982, stating that he was able to return to work as of November 21, 1982 (Exhibit

203). In March, 1983, the decision of the Employment Development Department was reversed, a finding was made that Petitioner had been released by his treating physician and was able to return to work. Unemployment benefits were ordered paid to Petitioner (Exhibit 204). Petitioner testified that in November, 1982, he was able to perform some jobs of a non-stressful nature within his occupation (RT 302-304).

After filing suit in the United States District Court for the Central District of California, this case was tried by that Court, without a jury. At the conclusion of trial, the Court entered Findings of Fact and Conclusions of Law (CR 84; Appendix A), and a Judgment that Petitioner take nothing (CR 83; Appendix B).

Petitioner's case at trial centered upon two main contentions: (1) that Petitioner's benefits under DAP and LTD had been wrongfully discontinued; and (2) that Petitioner's termination of employment with Credit constituted "wrongful termination of employment" under California law. The Trial Court heard testimony from Mr. Jones, Credit's Long Beach branch manager during the 2½ months Petitioner was at the Long Beach branch; from Mr. McCarter and Mr. Slywka, employees of Financial and Administrators of DAP; from Mr. Culton, an employee of Financial and Director of Administration; from Petitioner and his wife; from Mr. John Stonewall Miller, Jr., an expert called by Petitioner as to ERISA matters; and Dr. James Padova, an expert called by Respondents as to Petitioner's medical condition.

The Trial Court found that the actions of the plan administrators, Mr. McCarter and Mr. Slywka, were not

arbitrary or capricious and did not reflect bad faith. Findings of Fact 12-46 set forth the Trial Court's findings of fact relating to the termination of benefits issue (Appendix A, pp. 3-7).

The Trial Court also found that Petitioner's employment had not been wrongfully terminated. The Court found that Chrysler's employment policies were reasonable and were followed by Credit in terminating Petitioner's employment. The Trial Court found that it was Petitioner who had acted unreasonably and had frustrated Credit's efforts to counsel Petitioner on his job status. Findings of Fact 31-37, 39-41 and 51 set forth the Court's findings of fact relating to the wrongful termination of employment issue (Appendix A, pp. 5-7).

Petitioner timely appealed the Judgment to the United States Court of Appeals for the Ninth Circuit based upon issues of whether the ruling was based on substantial evidence, and whether the Trial Court applied the correct law to the facts of the case (Appellant's Brief, pp. 1-2).

Petitioner attacked the Trial Court's decision based only upon its Memorandum of Intended Opinion, rather than on the controlling and clearly stated Findings of Fact and Conclusions of Law, (Appellees' Brief, pp. 10-11; Appendix A). Furthermore, Petitioner failed to cite any case or other authority for a standard of law relating to actions of ERISA plan fiduciaries in denying plan benefits other than the "arbitrary, capricious, or bad faith" standard stated in the Trial Court's Conclusion of Law No. 2 (Appellees' Brief, pp. 12-13). Rather, Petitioner appeared to rely on an attempt to re-argue the facts *de*

novo, instead of the accepted "clearly erroneous" standard of review (Appellees' Brief, pp. 9-10).

The Ninth Circuit Court of Appeals, in its unpublished Memorandum Opinion filed September 24, 1987, held that none of the District Court's findings with respect to the claim for disability benefits was clearly erroneous, and that Respondents did not act arbitrarily or capriciously in discontinuing Petitioner's plan benefits (Appendix to Petition, p. I-62). The Court also held that the Trial Court's finding that Petitioner was terminated because of his failure to report to work upon his employer's demand was not clearly erroneous, and that Petitioner was not wrongfully terminated for attempting to exercise rights under the disability plans (Appendix to Petition, p. I-63). As noted in Petitioner's Petition for Writ of Certiorari, the Ninth Circuit Court of Appeals' Memorandum does *not* address any alleged conflicts between the Summary Plan Description ("SPD") and the Plan itself with respect to 30-day reporting requirements under the Disability Absence Plan ("DAP") (Petition, p. 22).

SUMMARY OF ARGUMENT

Respondents respectfully submit that this Petition for Writ of Certiorari should be denied in its entirety, as Petitioner makes no showing that the decision of the Ninth Circuit Court of Appeals in this case in any way conflicts with any decision of another federal court of appeals on the same matter. Rather, Petitioner relies upon unstated inferences, contrary to clear Findings of Fact and Con-

clusions of Law entered by the Trial Court, and upheld by the Ninth Circuit, to allege that the terms of the SPD are inconsistent with the terms of the DAP Plan, which allegedly resulted in the discontinuance of Petitioner's benefits.

As no such inconsistency exists, as the courts below found, Respondents believe that the authorities and propositions which Petitioner cites are not applicable to nor dispositive of this case. Therefore, no basis for invoking the jurisdiction of this Court exists. Instead, Respondents contend that this Petition is merely another frivolous attempt by Petitioner to seek a *de novo* review of the facts by this Court, in hopes of obtaining a more favorable ruling.

Respondents limit this Brief to issues relating to jurisdiction of this Court to grant review by writ of certiorari, and respectfully reserve argument on the merits to a later time should the writ be granted.

———o———

ARGUMENT

I.

NO GROUNDS EXIST FOR GRANTING REVIEW BY WRIT OF CERTIORARI IN THIS CASE, AS THERE IS NO CONFLICT BETWEEN THE NINTH CIRCUIT'S OPINION IN THIS CASE AND DECISIONS RENDERED BY OTHER FEDERAL COURTS OF APPEALS ON THE SAME MATTER.

A. THERE IS NO JURISDICTIONAL BASIS FOR REVIEW

Rule 17 of the Court Rules of the Supreme Court of the United States, dealing with considerations governing review on certiorari, states, in pertinent part, that:

> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> > (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

The timing for the filing of such review of a judgment or decree in a civil case is set forth in Supreme Court

Rule 20.2, which relies upon 28 U.S.C. Section 2101(c), which provides that:

> (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend that time for applying for a writ of certiorari for a period not exceeding sixty days.

Supreme Court Rule 20.4 furthermore notes that this ninety-day period runs from the date of the denial of a timely filed petition for rehearing.

Petitioner does not specifically articulate the statutory or other basis upon which he seeks a grant of review by certiorari from this Court. Respondents can only infer then, from his argument in the Petition, that the above form that basis. Even should that be the case, Petitioner has made no adequate showing that the Ninth Circuit's unpublished opinion is in conflict with other courts of appeals.

This Court held in *N.L.R.B. v. Pittsburgh S.S. Co.*, 340 U.S. 498 (1951), that review by writ of certiorari will be granted only in cases involving principles, the settlement of which are important to the public, as distinguished from parties, and in cases where there is a real and embarrassing conflict of opinion and authority between courts of appeals. *Id.* at 502-03. *Cf. United States v. Constantine*, 296 U.S. 287, 290 (1935) (diverse decisions in district courts, pending cases awaiting settlement of issue presented, affecting large number of people).

In his own Petition, Petitioner variously admits that: "Neither the trial court nor the Ninth Circuit commented upon these and other contentions of Petitioner concerning violations of ERISA claims statutes and regulations." (Petition, p. 21); and that "In its Memorandum, the Ninth Circuit does not allude to the fact that there is not mentioned in the SPD any requirement of a 30-day reporting period to submit medical reports" (Petition, p. 22).

Notwithstanding these candid statements, which support Respondents' position rather than his own, Petitioner attempts to draw unsupported inferences that the Ninth Circuit opinion reaches its decision by tacitly allowing ERISA disability plan fiduciaries to rely on prescriptions *not* found in the SPD or the Plan in denying benefits to plan participants (Petition, pp. 22-23). After "bootstrapping" this erroneous conclusion, Petitioner then goes on to cite authorities from other federal courts which would conflict with such a result.

In fact, in correctly using the "clearly erroneous" standard of review, as set forth in Rule 52(a) of the Federal Rules of Civil Procedure, and as construed by this Court in *United States v. U.S. Gypsum Co.*, 333 U.S. 369, 395 (1948), the Ninth Circuit below held that there was substantial evidence to support the District Court's decision that the DAP required Petitioner to file attending physician's statements every thirty days, that he was timely notified of that requirement, and that he failed to provide that information as required (Appendix to Petition, p. I-61). Thus, in examining the record from the lower courts, and based upon the foregoing authorities, it appears clear that this case is not an appropriate one for

the exercise of this Court's discretion to grant review by writ of certiorari. Respondents respectfully request that the Petition be denied.

B. THE CASES PETITIONER CITES ARE INAPPOSITE

The case of *McKnight v. Southern Life and Health Ins. Co.*, 758 F.2d 1566 (11th Cir. 1985), cited by Petitioner, involved a situation where a former employee was denied credit under a pension plan for previous service. The SPD and the Plan in that case were consistent and mandated the same result in that employee's situation. *Id.* at 1569-71. The same situation exists in the case at bar. As both the District Court and the Ninth Circuit held below, the SPD and the Plan were consistent in requiring Petitioner to provide proof of continuing disability. This Petitioner failed to do, and benefits were thus correctly discontinued.

Petitioner's citation of *Morgan v. Mullins*, 643 F.2d 1320 (8th Cir. 1981), is likewise not dispositive of this case. There, the Trustees made an interpretation of a resolution which imposed additional signatory employment on a mineworker who was receiving Black Lung benefits before allowing pension eligibility. *Id.* at 1323-24. That case is factually distinguishable from the instant one, in that the Respondents' plan fiduciaries relied on the SPD and the Plan in requiring Petitioner to submit attending physician's statements every thirty days, consistent with their plain meaning.

Similarly, the decision in *Maness v. Williams*, 513 F.2d 1264 (8th Cir. 1975), fails to support Petitioner's contention of a conflict herein. In that case, a pension plan's

trustees disregarded the plain wording of the plan and settlement agreement to make a separate eligibility requirement superfluous by their interpretation. *Id.* at 1266-67. Again, as previously noted, the plan fiduciaries in the present case made no such inconsistent interpretation, but instead relied on the plain wording of the SPD and the Plan in discontinuing Petitioner's benefits.

The same result pertains in analyzing *Kochendorfer v. Rockdale Sash & Trim Co., Inc.*, 653 F. Supp. 612 (N.D.Ill. 1987). In the present case, the SPD is clearly identified as such, contrary to conflicting "record-keeping" and summary descriptions in the *Kochendorfer* case. *Id.* at 616. Furthermore, as distinguished from the facts of that case, the Respondents' plan fiduciaries made a decision based upon the plain words of the reporting requirements contained in the SPD and the Plan, of which Petitioner was notified (Appendix to Petition, p. 0-164, 0-165).

Likewise, the case of *Wilken v. AT&T Technologies, Inc.*, 632 F. Supp. 772 (E.D.Mo. 1984), *aff'd* 822 F.2d 1095 (8th Cir. 1987), while citing the accepted proposition that imposition of a standard not required by an ERISA plan can result in an arbitrary act by a plan trustee, does not apply, as no such external requirement was imposed in this case.

Finally, it is also interesting to note that the Ninth Circuit Court of Appeals, in its decision in *Turner v. Local Union No. 302, Int'l Bro'hd. of Teamsters*, 604 F.2d 1219, 1225 n.8, 1226 n.11 (1979), at least peripherally dealt with the issue of conflicting brochures and plans, and stated that Plaintiff in that action had shown no such conflict,

or reliance thereon, suggesting that there might have been a different result if that had been shown. *Id. (citing Hurd v. Hutnik,* 419 F. Supp. 630, 640 (D.N.J. 1976); *Gallo v. Howard Stores Corp.,* 145 F. Supp. 909 (D.C. Pa. 1956), *aff'd* 250 F.2d 37 (3d Cir. 1957)).

Thus, it again appears clear that the conflict claimed by Petitioner to exist between the reasoning of the Ninth Circuit and that of the Eighth and Eleventh Circuits, and other district courts, does not in fact exist. Based upon all of the foregoing, Respondents respectfully request that this Petition be denied.

II.

GRANT OF A WRIT OF CERTIORARI IS INAPPROPRIATE TO REVIEW FACTS OR INFERENCES THEREFROM.

This Court held in *General Talking Pictures Corp. v. Electric Co.,* 304 U.S. 175, 178-79 (1937), that granting of a writ of certiorari "would not be warranted merely to review the evidence or inferences from it. . . . Moreover, the decision on that point rests on concurrent findings. They are not to be disturbed unless plainly without support." *Id.* (citations omitted). *See also United States v. Johnson,* 268 U.S. 220, 227 (1925).

A reading of the "Questions Presented" in this Petition (Petition, p. i), as well as the remaining portions of Petitioner's Brief (Petition, pp. 29-42), reveals review of this case would depend upon yet another review of the facts contained in the trial record for what Petitioner hopes would be a more favorable ruling on the issues. As noted above, the Ninth Circuit found that the decision of the District Court in this case was supported by sub

stantial evidence, and that none of the operative findings or conclusions entered by that Court was clearly erroneous. (Appendix to Petition, p. I-62, I-63). Therefore, Respondents submit that further factual review of this case is inappropriate, and respectfully urge that this Petition be denied in its entirety.

CONCLUSION

The decision rendered by the Honorable David W. Williams, of the District Court for the Central District of California, in this case held that Petitioner was adequately and timely notified of the requirements of providing continuing proof of disability to Respondents under the terms of the Summary Plan Description and of its Disability Absence Plan. It was further concluded that Respondents did not act arbitrarily, capriciously, or in bad faith in discontinuing Petitioner's benefits under the Plan for failing to comply with its terms as specified. Finally, Judge Williams found that Petitioner was not wrongfully discharged, as his employment was not terminated for attempting to exercise ERISA rights; rather, he was discharged for failing to return to work upon Respondents' demand.

The Ninth Circuit Court of Appeals, by the Honorable Judges Beezer, Hall, and Hardy, upheld this decision on appeal, noting that none of the operative findings was clearly erroneous. The Ninth Circuit made no mention of the Respondents' plan fiduciaries imposing greater

reporting requirements upon Petitioner than those found either in the SPD or the Plan.

Yet, despite these facts, and, indeed, Petitioner's own admission of these facts within his Petition, he seeks to infer an erroneous, tacit conflict between the lower courts' decisions and those of other federal courts on the same matter. As shown above, no such conflict exists. The decisions Petitioner cites deal with cases either where an inconsistency exists between a Summary Plan Description and its underlying ERISA Plan, or where the plan fiduciaries have made an interpretation of their plan documents, contrary to their plain wording, which imposes greater or different requirements than stated. Neither is the case here. Respondents' plan fiduciaries decided to discontinue Petitioner's benefits based upon the consistent terms of the SPD and the Plan, of which Petitioner was adequately and timely notified. Likewise, Petitioner's exercise of ERISA rights was not the basis of his employment discharge.

Respondents respectfully submit that Petitioner is once again attempting to have this Court review factual issues, in hopes of a more favorable result. Such an attempt is not an appropriate one for an exercise of judicial discretion in granting review by writ of certiorari.

Based upon all of the foregoing Respondents respectfully request that the Court deny this Petition in its entirety.

DATED: April 11, 1988

Respectfully submitted,

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH M. LOESCHNIG, Plaintiff, v. CHRYSLER CREDIT CORPORATION, et al., Defendants.	CASE NO. 83 1350 DWW (JRx) FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The above entitled action came on for trial before the court, without a jury. Plaintiff appeared in person and by his attorneys, law offices of Steven Roseman, by Steven Roseman. Defendants appeared by Irsfeld, Irsfeld & Younger, by James J. Waldorf and Peter J. Irsfeld.

The court having considered the testimony, evidence and arguments of the parties, now makes and files the following findings of fact and conclusions of law.

FINDINGS OF FACTS

The court adopts the following findings of fact:

1. Defendant, Chrysler Financial Corporation, ("Financial") is a wholly owned subsidiary of Defendant, ChryslerCorporation [sic]. Defendant, Chrysler Credit Corporation ("Credit") is a wholly owned subsidiary of Financial.

2. Plaintiff was employed by Credit on February 8, 1967.

3. Plaintiff's job duties generally consisted of servicing delinquent accounts of automobile purchasers, repossessing automobiles when delinquencies became serious and negotiating financial transactions with franchise dealers.

4. Plaintiff was employed in the San Diego area at Credit's San Diego branch continuously from September 8, 1967 to approximately 1981.

5. In 1981, and at the request of Plaintiff, Plaintiff left the San Diego branch to go into a training program for the job of auditor.

6. After completing the training program, Plaintiff indicated to Credit that he wished another job assignment because the job of auditor required him to travel and disrupted his family life. He requested reassignment to his former job at the San Diego branch of Credit.

7. At the time of this request, Credit had no opening in its San Diego branch.

8. Plaintiff was permitted to join Credit's staff at its Long Beach branch and was assigned job duties of a lower level but with no reduction in salary. Plaintiff commenced work at the Long Beach branch on September 1, 1981.

9. Several years prior to 1981, Plaintiff had been diagnosed and treated by a Dr. Gould as having hypertension or high blood pressure.

10. Plaintiff's condition caused him to experience headaches and irritability.

11. In November, 1981, Plaintiff experienced an attack of dizziness while at home and requested his wife to drive him to a nearby hospital.

12. Plaintiff received treatment and was released after approximately one hour.

13. Plaintiff's wife telephoned the Long Beach branch of Credit and advised Credit that Plaintiff was not physically able to return to work.

14. Plaintiff's last day of work at Credit was November 18, 1981.

15. Defendant, Chrysler Corporation, maintains two disability plans for its employees. One plan is entitled "Disability Absence Plan" ("DAP") and is a 12-month plan. The second plan is entitled "Long Term Disability Plan" ("LTD"). Coverage under LTD commences upon expiration on [sic] the 12-month DAP coverage and is available for periods of extended disability.

16. DAP was administered by Financial for Credit's employees.

17. In November, 1981, Plaintiff applied for benefits under DAP, which benefits were granted.

18. Shortly after November, 1981, Plaintiff and his wife moved to Las Vegas, Nevada.

19. In January 8, 1982, the Company requested Plaintiff to submit to an examination by Dr. Russell Miller, a physician in Las Vegas.

20. On January 29, 1982, Dr. Miller confirmed that Plaintiff had disabling hypertension which was aggravated by the stress of his employment.

21. On July 22, 1982, Dr. Miller reported to Financial that Plaintiff could return to work but in a less stressful capacity.

22. During the 11 months subsequent to November, 1981, Financial set up three examination appointments for Plaintiff, two with the same doctor.

23. DAP required Plaintiff to submit attending physician's statements every 30 days as a condition to establishing his eligibility under DAP.

24. During the 11 months subsequent to November, 1981, Financial constantly urged Plaintiff to comply with his obligation to furnish attending physician supplements every 30 days to substantiate his eligibility to receive DAP benefits.

25. Plaintiff knew that DAP required him to furnish attending physician's statements every 30 days. With a

few exceptions, Plaintiff failed to comply with this requirement.

26. The policies adopted by Financial in requiring the submission of attending physician's statements at 30-day interval [sic] are reasonable.

27. Plaintiff felt he was burned-out. He wanted to get away from Chrysler and to block out of his mind any thought of his past association with Chrysler.

28. During the 11 months following November, 1981, Plaintiff did not contact any person connected with either Credit or Financial.

29. During the 11 months following November, 1981, representatives of Credit and Financial, on various occasions, attempted to contact Plaintiff. On each occasion, Plaintiff's wife would talk to said representatives but would refuse to summon her husband to the telephone. The reason given on each occasion was that he was under sedation and required bed rest.

30. Plaintiff enjoyed gambling and often spent 6 to 8 hours a day, 5 days a week playing poker in various Las Vegas casinos. Plaintiff also engaged in betting on sporting events. Plaintiff's gambling activities occurred continuously during the time Plaintiff lived in Las Vegas.

31. During the 11 months subsequent to November, 1981, Plaintiff moved his place of residence on several occasions. Plaintiff failed to advise either Financial or Credit of his change of address.

32. Financial experienced considerable difficulty contacting Plaintiff because of his failure to notify them of change [sic] addresses.

33. During the 11 months subsequent to November, 1981, Plaintiff followed a practice of avoiding any contact with Financial or Credit and successfully evaded any effort by Financial or Credit to personally contact him.

34. The practices followed by Financial and Credit to contact Plaintiff relative to his job situation and to administer DAP and LTD were not unreasonable and were not intended to upset Plaintiff or aggravate his condition.

35. Chrysler Corporation has a policy of actively discouraging workers to separate from their jobs.

36. Credit was willing to find a job for Plaintiff which would not aggravate his condition but was unable to communicate with Plaintiff to discuss the matter with him.

37. Plaintiff's practice of evading any contact with Credit or Financial frustrated efforts to counsel with Plaintiff relative to his job situation or the administration of his claims under DAP.

38. On November 2, 1982, Financial sent Plaintiff a letter discontinuing DAP benefits, effective October 25, 1982. The reason for such discontinuation of benefits was Plaintiff's failure to substantiate eligibility for DAP benefits.

39. The November 2, 1982 letter, described in finding 38 above, instructed Plaintiff to report to work at the Long Beach office of Credit on November 8, 1982.

40. Plaintiff failed to report to work on November 8, 1982.

41. On November 17, 1982, Financial sent Plaintiff a letter terminating Plaintiff's employment with Credit,

effective October 25, 1982. The reason for such termination of employment was Plaintiff's failure to report to work as instructed in the November 2, 1982 letter.

42. On November 15 and December 3, 1982, Plaintiff, through his counsel, wrote Chrysler Corporation appealing Financial's decision to terminate Plaintiff's DAP benefits. This appeal was forwarded to Financial for review and reply.

43. Financial did review Plaintiff's disability file and responded to Plaintiff's appeal on January 5, 1983.

44. The decision of the administrators of DAP to discontinue Plaintiff's benefits under DAP was not arbitrary or capricious and did not indicate bad faith on the part of said administrators.

45. The action of the administrators of the DAP in the review of Plaintiff's appeal was not arbitrary or capricious and the decision of the administrators not to reinstate DAP benefits did not indicate bad faith on the part of said administrators.

46. During his approximately 15 years of employment with Credit, Plaintiff did not receive assurances of continued employment by Chrysler Corporation, or its subsidiaries.

47. Plaintiff's employment was not terminated because of his failure to respond to a request for medical information. Plaintiff's employment was terminated because of his failure to report to work.

48. Plaintiff's employment was terminated under a policy of Chrysler Corporation relating to the discharge

of employees who failed to report to work or are absent from work without justifiable reason.

49. Financial and Credit complied with Chrysler Corporation policies and procedures in terminating Plaintiff's employment.

50. In terminating Plaintiff's employment, neither Financial and/or Credit acted in bad faith or with an intent to harm or injure Plaintiff or from any malice or ill-will toward Plaintiff.

51. The actions of Financial and Credit in terminating Plaintiff's employment were reasonable and justified under the circumstances of this case.

CONCLUSIONS OF LAW

1. DAP and LTD are covered by the provisions of the Employees Retirement Income Security Act of 1974 ("ERISA"). This conclusion of law is based upon this court's "Order Denying Plaintiff's Motion for Partial Summary Judgment" dated February 4, 1985.

2. The standard of review to be applied by this court in scrutinizing the actions of the administrators of DAP in discontinuing Plaintiff's benefits thereunder is whether such actions were arbitrary or capricious and reflected bad faith. *Hurn v. Retirement Trust Fund, etc., of Southern California*, 702 F.2d 386, 389 (9th Cir. 1983).

3. The requirement of DAP that attending physician supplements be submitted at 30-day intervals to establish eligibility under DAP is a reasonable requirement.

4. Plaintiff was timely notified of his obligation to submit attending physician's statements on 30-day intervals.

5. Plaintiff substantially failed to meet his obligation to provide medical information to the DAP administrators so as to substantiate his continued eligibility for DAP benefits.

6. The decision of the DAP administrators to discontinue Plaintiff's benefits thereunder was not arbitrary or capricious and said administrators did not act in bad faith.

7. The DAP administrators reviewed and responded to Plaintiff's appeal of his denial of DAP benefits in a timely manner and substantially complied with the requirements of ERISA relative thereto.

8. Plaintiff was not wrongfully denied benefits under DAP or LTD under the provisions of ERISA.

9. Plaintiff is not entitled to recover attorneys' fees under the provisions of ERISA.

10. Plaintiff's termination of employment was not wrongful and did not constitute the breach of any express or implied employment agreement between Plaintiff and Defendants and did not represent a breach of any covenant of good faith and fair dealing.

11. Defendants' conduct in terminating Plaintiff's employment was not willful, malicious or oppressive.

12. Plaintiff is not entitled to recover any damages from Defendants on account of the termination of Plaintiff's employment.

13. Defendants are the prevailing parties in this action and are entitled to recover their costs.

Judgment entered for Plaintiff [sic] in accordance with the above findings and conclusions.

DATED: June 3, 1986

/s/ DAVID W. WILLIAMS
UNITED STATES DISTRICT
JUDGE

"APPENDIX B"

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[3:30 p.m.
LODGED
May 9, 1986
Clerk, U.S. District Court
Central District of California
by Deputy]
[FILED
June 4, 1986
Clerk, U.S. District Court
Central District of California]
[ENTERED
June 6, 1986
Clerk, U.S. District Court
Central District of California]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH M. LOESCHNIG, Plaintiff,	)	
v.	)	CASE NO. 83 1350 DWW (JRx)
CHRYSLER CREDIT CORPORATION, et al., Defendants.	)	JUDGMENT

This action came on for trial before the court, the Honorable David W. Williams, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered.

IT IS ORDERED AND ADJUDGED

That Plaintiff take nothing, that the action be dismissed on the merits, and that Defendants, Chrysler Cor-

poration, Chrysler Credit Corporation and Chrysler Financial Corporation recover of Plaintiff their costs incurred in this action and taxed at $_____.

Dated at Los Angeles, California this 3rd day of June, 1986.

/s/ DAVID W. WILLIAMS
JUDGE